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IMPORT POLICIES

¶1. TARIFFS

Swaziland is a member of the World Trade Organization (WTO), the Southern African Customs Union (SACU), the Southern Africa Development Community (SADC), and the Common Market for Eastern and Southern Africa (COMESA). As a member of SACU, Swaziland's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Swaziland applies the SACU common external tariff. However, Swaziland introduced a 14 percent sales tax for goods coming through its borders regardless of the SACU member country of origin.

Swaziland's continued retention of its COMESA status is uncertain as the COMESA Heads of State and Government continue to give Swaziland one year derogations. The present derogation ends in December 2008. COMESA plans to establish a Customs Union by December 2008, making Swaziland's multiple memberships in SACU and COMESA a challenge. The government of the Kingdom of Swaziland (GKOS) has engaged the USAID Southern African Competitiveness Hub to do a study to assess the economic importance of the COMESA market to Swaziland. Swaziland exports four main products to this market, the largest being soft drink concentrate, produced by Coca Cola Swaziland. The study has made recommendations which the GKOS is still to adopt.

¶2. NONTARIFF MEASURES

There are no restrictions on imports into Swaziland and few prohibited imports (except illicit drugs, pornography and arms). Permits are required for certain imports, including all agricultural products, mineral fuels, used clothes, mineral oils, motor vehicle parts, used cars, medicinal drugs, and electrical appliances. Licensing permits issued by the Ministry of Finance are generally easy to obtain and are valid for one shipment. Goods imported to Swaziland from outside SACU must be cleared through customs at the first port of importation into SACU. A bill of entry must be completed and submitted to customs, along with copies of the supplier's invoices and a Swaziland import permit.

A cited nontariff barrier to trade was the October 2008 introduction of the Automated Systems for Customs Data (ASYCUDA) to all border posts. Although ASYCUDA is a significant improvement from the previous system, it does not communicate with South Africa's customs system, necessitating traders to declare their goods twice.

Another nontariff barrier is SADC's Single Administrative Document 500 (SAD 500) form. The form is used for multiple border crossings and is supposed to standardize the number of forms needed for transporting goods between SADC countries. Entrepreneurs trading between SADC countries find the form cumbersome. The business community has inundated the Federation of Swaziland Employers and Chamber of Commerce with complaints. Large businesses are coping with the requirement by designating employees to complete the form. However, small entrepreneurs, with fewer employees and resources, become reliant on makeshift offices opened at the borders to complete the forms. These offices often charge exorbitant fees.

Other nontariff barriers to trade commonly cited are levy charges

and sales tax on some products like agricultural products, mineral fuels, electronic equipment, etc.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In April 2008 the Swaziland Standards Authority (SSA) became fully operational. The aim of this institution is to eliminate Swaziland's reliance on the South African Bureau of Standards (SABS), but it will work closely with SABS.

GOVERNMENT PROCUREMENT

Although the government may accord local businesses a 15 percent price preference in tendering for government contracts, it appears that this preferential treatment is not always granted. South African and other southern African countries are selected for a large portion of government contracts. However, for small- and medium-sized tenders, bidding companies must be registered in Swaziland. The government inspects the premises of all suppliers prior to awarding the tender. The government's withholding of a 10 percent tax from local government suppliers has been removed.

The government issues tender notices 7 to 30 days before tenders are due, depending on the size of the contract. Potential suppliers must pay a fee to obtain tender documentation and participate in government procurements. Tenders must be submitted to the Central Tender Board and suppliers are invited for the opening of the tenders. In some instances, a Ministry can apply for a waiver of the tender procedure if there are too few companies that supply a particular commodity.

The Ministry of Finance has drafted a new Public Procurement law. Currently, the Ministry is consulting with stakeholders about the draft bill. The bill will establish a public procurement regulatory authority, other public procurement institutions, and provide regulation and control of practices in respect to public procurement of goods, works and services by procuring entities.

Although the draft bill says there will be no discrimination, GKOS will facilitate participation by Swazi companies in public procurement.

Swaziland is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Swaziland is a party to the WIPO Convention, the Berne Convention for the Protection of Literary and Artistic Works, and the Paris Convention for the Protection of Industrial Property. Swaziland is also a party to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and the Patent Cooperation Treaty. Swaziland is a signatory to the Patent Law Treaty and the Trademark Law Treaty.

Protection for patents, trademarks, and copyrights in Swaziland is inadequate.

Updated patent legislation has been in draft form for the past four years. When the new legislation is passed and enacted, the African Regional Industrial Property Organization is expected to help Swaziland with technical assistance in granting patents.

Copyright protection is also limited, as the copyright statutes are not adequately implemented. The Ministry of Justice and Constitutional Affairs has drafted an updated Copyright Act, based on the World Intellectual Property Rights Organization (WIPO) model.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. In 2007, the GKOS de-monopolised the insurance industry, and a number of insurance companies are now operating in the country.

MTN Swaziland is the only mobile telecommunications provider. MTN Swaziland was given a 10 year monopoly that ends in 2008.

The Swaziland Post and Telecommunications Corporation is the sole provider of the fixed-line telecommunications services.

INVESTMENT BARRIERS

Swaziland does not have an investment code. The emphasis on foreign investment is more a matter of policy statements by the government and individual ministers than a matter of laws and institutions to support such policies. Calls for the streamlining of procedures to start a business have gone unheeded. Few suggestions from the USAID-funded 2005 Investor Road Map report have been implemented.

Major legislation to support a solid investment climate is lacking in Swaziland. There is a need for a Securities Code to support investors who buy shares in the securities market. A Securities Bill has been proposed, but not yet passed. Related legislation known as the Financial Services Regulatory Authority Bill has not reached Parliament. The legislation would bring under one regulatory net all non-bank financial institutions such as insurance firms, retirement funds, building societies, capital markets, and intermediaries.

The outdated Companies Act of 1912, which was retooled from an 1889 South African law, has finally been replaced. In 2008 the "Companies" law passed through parliament and now awaits the King's signature. The law would regulate incorporation, registration, management, administration, and dissolution of companies. While foreign businesses currently operating in Swaziland complain about the lack of regulations, some also emphasize that it would be a mistake to decide against investing in Swaziland for this reason alone.

There are no formal policies or practices that discriminate against foreign owned investors and companies in Swaziland. Foreign investors are free to invest in most sectors of the Swazi economy; however, investors should be aware of state-run or state-sanctioned monopolies. Pineapple canning, cellular and fixed line telecommunications, and water are all state- sanctioned or state-owned monopolies. The Trade and Business Facilitation Bill, originally drafted in 2001, requires specified sectors to maintain a certain degree of Swazi ownership, and encourages small scale entrepreneurship in rural areas. The bill is waiting for consideration by parliament.

The Cabinet has approved a privatization policy, and the GKOS is taking steps to implement the policy. The privatization process will create a Public Enterprise Agency charged with ensuring that public enterprises are managed efficiently and are not a drain on the nation's resources. A key parastatal being targeted for privatization, with the possibility of joint ventures for foreign investors, is the Swazi Post and Telecommunications Corporation (SPTC). The Swaziland Electricity Act 2007 outlawed the Swaziland Electricity Board's previous monopoly. The Swaziland Electricity Board is now a private company, although still wholly owned by the Swazi Government. It is hoped that the GKOS will set up the office of the Energy Regulator and also open the sale of shares in the Electricity Company this year. There is room for improvement, as GKOS efforts are moving slowly.

Land acquisition is a barrier to investment in Swaziland. Large plots of land not designated as Swazi Nation Land (under the control of local or national officials), are difficult to find, and companies, especially those in agribusiness, are therefore finding it difficult to expand their operations.

PARKER